October 15, 2001

VIA E-MAIL AND U.S. MAIL

Jon Heinrich
Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

RE: Comments on DNR's Proposed Mercury Emission Rule

Dear Mr. Heinrich:

I. INTRODUCTION.

The Forest County Potawatomi Community ("FCPC") appreciates the opportunity to submit comments on the Department of Natural Resources ("DNR") proposed rulemaking regarding airborne emissions of mercury. As you know, the FCPC is currently serving on the task force appointed by DNR for this important rule-making proceeding.

The FCPC is a federally recognized Indian tribe with a substantial interest in protecting the lands, waters and natural resources on which we so extensively rely. Because of the Tribe's unique connection to the environment, we believe mercury deposition is a significant issue with the potential to disproportionately impact our community. Therefore, we are generally supportive of attempts to reduce the amount of mercury being deposited into our lakes and streams. However, we believe that much more needs to be done to address this important issue, and offer the following comments for your consideration.

II. THE RULE SHOULD FOCUS ON SOURCES OF LOCALIZED MERCURY DEPOSITION.

The proposed rule has apparently generated a significant amount of controversy because many commentors believe that mercury deposition in Wisconsin is primarily due to sources located outside the state. Many commentors have argued that state-only controls on mercury emissions from such sources will do little to reduce mercury deposition within the state.

While the FCPC is expressing no opinion in the comments on the impact of combustion sources on mercury deposition in the state or the effectiveness of state-only emission controls on

such sources, we believe that it is clear that the proposed rule should include the regulation of sources that are likely to have a particularly localized impact. In other words, sources that emit mercury in a form that is not transported great distances but rather deposits relatively close to the source should be regulated more heavily than sources whose mercury emissions are more likely to remain in the atmosphere for long periods of time.

Thus, FCPC believes that the DNR should identify sources that are likely to have a more localized impact (e.g., non-combustion sources generating large particulate emissions) and develop appropriate requirements and emission standards for such sources. FCPC suggests that these sources be required to conduct appropriate air deposition modeling and demonstrate that their mercury emissions will not adversely impact the local environment. Furthermore, in addition to the ambient air concentration limits, the DNR should consider establishing a limit on the amount of mercury deposition that may occur within a specified distance of such sources.

FCPC also believes that the rule should require all new or modified sources shown to have a localized impact to obtain emission offset credits from the locally impacted area around the source. This would ensure that there is no net increase in mercury deposition in these locally impacted areas. If sufficient offset credits from the affected area are not available then the source should be required to obtain offsets at a greater ratio (e.g., 2 to 1 or 3 to 1).

III. EMISSION OFFSETS SHOULD BE REQUIRED OF ALL NEW/MODIFIED SOURCES.

It appears that the proposed emission offset requirements do not take effect until 4 years after the effective date of the rule and would only apply to sources constructed or modified after that date. Thus, it appears that any new source that commences construction any time prior to 4 years after the effective date of the rule would not be required to obtain emission offsets. New sources would therefore apparently have a great incentive to commence construction earlier than the 4-year mark to avoid the offset requirement.

Furthermore, it appears that new sources constructed after the effective date of the rule, but before the emission offset requirement takes effect, are allowed 3 years to establish their emission baseline. Mercury emissions from these new sources are not capped until the year after the source has established its emission baseline. Because the emission offset requirement does not go into effect until 4 years after the effective date of the rule, it is possible that there would not be any prescribed limits on the amount of mercury a new source could emit during its 3-year baseline setting period. Thus, a new source commencing operation prior to the date when emission offsets are required, would likely have a great incentive to emit as much mercury as possible during its baseline setting period in order to establish a high baseline level that would then become the source's emission cap.

Therefore, in order to avoid the potential for new sources to set artificially high baseline levels while avoiding emission offset requirements, FCPC recommends that the rule require all new sources commencing construction or modification at any time after the effective date of the rule to obtain emission offsets at the appropriate ratio.

IV. CONCLUSION.

FCPC appreciates that opportunity to submit comments on this significant and important issue and would be happy to discuss our concerns and comments with you in greater detail. Therefore, if you have any questions or would like to discuss this issue further, please call Jeff Crawford at 414-847-7748.

Very truly yours,

FOREST COUNTY POTAWATOMI
COMMUNITY

Jeffrey Crawford
Attorney General

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